

# Standard Maintenance and Support Service Agreement

## Definitions

- "Agreement" means this Agreement for the supply of the Services subject to the provisions herein;
- "Bespoke Software" means the software written by the Seller to the Buyer;
- "Customer" means the customer named on Page 1;
- "Contracted Volume" means the volume of prints/scans contracted for in relation to any standard charge mentioned on Page 1.
- "Equipment" means the equipment as stated in the Equipment Schedule on Page 1;
- "Installation Address" means the address on Page 1 being the address at which the Equipment will be installed and operated;
- "Period" means a minimum period of 60 calendar months (or such other period as may be agreed between the Supplier and the Customer and recorded in the "Notes" section on Page 1) commencing on the date on which the Customer signed this Agreement or the date on which the Equipment/Software was installed, which ever is the later, subject to the provisions of clauses 13 and 14 of this Agreement;
- "Page 1" The first page of this Agreement;
- "Supplier" means: Fovia (Innovation) Limited (Registered in England No. 4259043);
- "Standard Support Hours" means the hours of 9am – 5pm, Monday – Friday, excluding Bank Holidays;
- "Services" means the maintenance and support services which the Supplier is to perform as set out in Schedule B subject to the provisions of Schedule C.
- "Print" means each metered single sided Copy or Print made on the equipment up to A4 size and for each 5 scans taken on the Equipment where no Copy or Scan is simultaneously made.

## IT IS AGREED as follows: -

### Services

- 1 The Supplier hereby undertakes subject to the provisions hereof to provide the Services in respect of the Equipment and/or the Bespoke Software to the Customer at the Installation Address during the Standard Support Hours for the Period.

### Charges

- 2 The charges for the Services are as stated on Page 1. Additionally reasonable travel and subsistence expenses shall be payable. This clause is subject to clause 6.

### VAT

- 3 All charges are subject to VAT at the current rate.

### Response Times

- 4 The Supplier shall use its reasonable endeavours to provide the Services within 8 working hours. This clause is subject to Schedule B.

### Equipment

- 5 The Customer is responsible for and confirms that the details of the Equipment provided to the Supplier are correct.

### Amendment to Schedules and charges

- 6.1 The Supplier reserves the right:
- 6.1.1 to increase the charges annually by no more than 10%, the current rate of inflation, or the actual increase imposed by the Supplier's supplier, whichever is the greater;
- 6.1.2 if, in the reasonable view of the Supplier, the Customer is making consistently low use of the Equipment, to impose a minimum maintenance service charge of £50 +VAT per machine per quarter and/or, in the Supplier's sole discretion, to offer to supply maintenance services on a time and material basis.
- 6.1.3 to amend the Schedules to this Agreement from time to time to reflect the changing requirements of the Customer.
- 6.2 Any variation to this Agreement is of no effect unless agreed in writing by a Director or Company Secretary of the Supplier.

### The Customer's Responsibilities

- 7 The Customer hereby undertakes to comply with its obligations and responsibilities as set out in Schedule A to this Agreement.

### Maintenance and Support Services

- 8 The Supplier shall provide the Services (as set out in Schedule B to this Agreement).

### Excluded Maintenance and Support Services

- 9 The Supplier shall not provide the services as detailed in Schedule C to this Agreement.

### Payment

- 10.1 Payment of the charges for the Services is due 30 days after the date of the invoice. Time of payment is of the essence. (See also 13.4 below).
- 10.2 Payment by the Customer shall be made without any deduction, set off, discount, abatement, counter-claim or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 10.3 The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and to recover all and any costs incurred by it (including costs, fees and disbursements of any outside agency and/or legal fees) in collecting any monies due. This will not affect any other right or remedy available to the Supplier.
- 10.4 In the event that (a) the charges for the Services in relation to Equipment include a Contracted Volume of prints/scans and (b) the total number of prints/scans produced by the Equipment is less than the Contracted Volume for 4 consecutive quarters the Supplier will, at the Customer's request, consider revising the Contracted Volume and reducing the charges appropriately.

### Service Warranties and Undertakings

- 11.1 The Supplier hereby represents and warrants that:
- 11.1.1 Subject to clause 11.3 the Services shall be performed:
- (i) in such a way as not to cause any fault or malfunction in the Bespoke Software (or any related software or system of the Customer), or
- (ii) any interruption to the Customer's business processes (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
- (iii) with all reasonable skill and care.
- 11.1.2 Save for any consents, licences, permissions and the like which it is the Customer's sole responsibility to obtain, at the date of this Agreement the Supplier has obtained and shall maintain for the duration of this Agreement all permissions, licences and consents necessary for the Supplier's performance of the Services.
- 11.2 If the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in sub-clause 11.1, the Supplier shall, at the Supplier's own expense, remedy that breach within 30 days following receipt of such notice failing which the Customer shall be entitled to pursue such rights and remedies as are available to the Customer.
- 11.3 For the avoidance of doubt whilst the Supplier shall use reasonable endeavours to ensure the integrity and security of any Server used to provide any of the Supplier's services the Supplier does not guarantee that the Server shall be free from unauthorised users or hackers and does not warrant that the service shall be free from interruption or down-time of the Server.

### Limitation of Liability

#### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 12.1 Save as expressly provided in these terms the Supplier makes no warranty, representation or condition of any kind concerning the Services and, in particular (without limitation), the Supplier makes no warranty, representation or condition as to standard, value, condition, design, operation or performance and all such warranties, representations, conditions, obligations and liability of any kind whatever, whether in contract or tort, whether express or implied or otherwise in respect of the Services are expressly excluded to the fullest extent permitted by applicable law.
- 12.2 Nothing in these Conditions excuses or limits the Supplier's liability for death or personal injury caused by the Supplier's negligence or for fraudulent misrepresentation.

#### Subject to Conditions 12.1 and 12.2:-

- 12.3.1 The Supplier shall not be liable to the Customer for any loss of actual or anticipated profits or savings, loss of contract, loss of business, loss of production, financial loss, depletion of goodwill, punitive, indirect, special, incidental or consequential loss or damages, loss of income, loss of business opportunities, damage to or corruption of data or any damages due under penalty clauses, wasted expenditure, costs or expenses whatsoever which arise out of or in connection with this Agreement (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if, in any such case, such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.
- 12.3.2 Subject to Condition 12.3.1, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to re-performing the Services (or if the Supplier elects, to the cost of re-performing the Services);

### Termination

- 13.1 Subject to clause 14, this Agreement shall continue in force for a period of 60 calendar months unless otherwise varied in accordance with these terms;
- 13.2 The Customer may terminate this Agreement at any time after the first anniversary on giving the Supplier at least 90 days notice in writing PROVIDED THAT the Customer pay the Supplier compensation calculated on the following basis: A x B ÷ 65% Where A is the equivalent of the average quarterly volume billed up to the date of termination and B is the number of quarters remaining (or part thereof) from the date of termination to the end of the Period; This will be calculated using the cost per print at the point of termination.
- 13.2.a In the event that Agreement provides for the Customer to be provided with "free copies" clause 13.2 above shall be modified as follows: A shall not be the equivalent of the average quarterly payment billed up to the date of termination but shall instead be the average quarterly volume of prints used up to the date of termination multiplied by the current additional print charge provided for in the Agreement.
- 13.3 In the event the Customer's period invoice value reduces by more than 50% of the average of the preceding four period invoice values the Supplier reserves the right to deem that the Customer has terminated this agreement in which case the Customer shall pay the Supplier agreed damages calculated on the basis set out in paragraph 13.2.
- 13.4 In the event that the Customer fails to make payment in accordance with paragraph 10.1 above, the Supplier shall have the right to a) terminate this Agreement or b) suspend all of the Supplier's obligations under this Agreement indefinitely, if the Supplier exercises either of these rights it will inform the Customer in writing.

### Automatic Termination and Termination by the Supplier

- 14.1 The Agreement shall terminate immediately upon the happening of any one or more of the following: -
- 14.1.1 the Customer is dissolved or has a bankruptcy order made against him or makes an arrangement or composition with his creditors; or
- 14.1.2 the Customer (being a body corporate) convenes a meeting of creditors or enters into liquidation (whether voluntary or compulsory); or
- 14.1.3 the Customer has a receiver, manager, administrator or administrative receiver appointed of the whole or any part of its undertaking, property or assets; or
- 14.1.4 a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer; or
- 14.1.5 any proceedings are commenced relating to the insolvency or possible insolvency of the Customer in any jurisdiction to which the Customer or any of its assets is subject; or
- 14.1.6 the average metered consumption falls below 40 per cent of the average consumption in the first year of the Agreement (in which event the Customer shall be liable to pay compensation calculated on the basis set out in paragraph 13.2 above.
- 14.2 The Agreement shall terminate immediately upon service of written notice of termination by the Supplier on the Customer on the happening of any one or more of the following:-
- 14.2.1 the Customer has, suffers or allows any execution to be levied on its assets or obtained against it; or
- 14.2.2 the Customer commits a material breach of any of its material obligations under the Agreement or under any other agreement with the Supplier; or
- 14.2.3 the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 14.2.4 the Customer ceases or threatens to cease to trade.
- 14.3 Termination of the Agreement shall not affect rights and duties accrued before termination and in particular the balance of the charges for the Services as provided by this Agreement shall remain payable.

### Agents and Contractors

- 15 The Supplier reserves the right at its sole discretion to engage independent contractors or agents to carry out on its behalf all or any part of the Services referred to herein and in any such event the provisions of this Agreement shall be deemed to apply to such independent contractors but without prejudice to the rights and obligations of either party to this Agreement.

### Indemnity

- 16 Except in so far as the Supplier is excluded by law from so requesting, the Customer shall indemnify the Supplier, its employees and representatives (including its independent contractors) against all claims, demands or proceedings made by any third party in respect of any loss or damage (including consequential or indirect loss or damage) howsoever caused and further the Customer shall also indemnify the Supplier against all claims, demands or proceedings brought by any of the Supplier's employees, representatives or independent contractors in respect of any injury, loss or damage to property (including indirect and consequential loss or damage) occasioned whilst at the premises of the Customer but which is not due solely to the negligence of the Supplier

### Assignment

- 17 This Agreement is personal to the Customer who may not assign, sub-contract or otherwise transfer this Agreement or any part of it

without the prior written consent of the Supplier.

### Severability

- 18 If any provision in this Agreement is held to be illegal or unenforceable in whole or part, such provision or part shall to that extent be deemed not to form part of this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected.

### English Law

- 19 This Agreement shall be subject to the laws of England and the non-exclusive jurisdiction of the English Courts.

### Disputes

- 20 If any dispute arises out of this Agreement the parties will attempt to settle it by mediation in accordance with the procedures of ADR Group ([www.adrgroup.co.uk](http://www.adrgroup.co.uk)). Unless otherwise agreed between the parties the mediator will be nominated by ADR Group.

### SCHEDULE A (PARTICULARS OF THE CUSTOMER'S RESPONSIBILITIES)

- (1) Upon becoming aware of the need for maintenance and support or any failure of the Equipment to notify the Supplier of such immediately;
- (2) Provide the Supplier and all other persons duly authorised by the Supplier with such access to the Customer's premises as may reasonably be required for the purpose of performing the Services, such access except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours;
- (3) Ensure the health and safety of the Supplier's staff while at the Customer's premises and that appropriate environmental conditions and electricity supplies are maintained for the Equipment and/or Bespoke Software and the Customer shall take all reasonable steps to ensure that the Equipment and the Bespoke Software are operated in a proper manner;
- (4) Nominate a Manager to be available to liaise with, and respond to queries from, the Supplier;
- (5) Permit the Supplier to inspect the Equipment prior to commencement of the Agreement;
- (6) Use only the latest release of the Bespoke Software;
- (7) Keep full security copies and backups of all software and of the Customer's data bases and computer records in accordance with the best computing practice; eg take full backups at least every working day and ensure the backup has been successful by checking the log files;
- (8) Not alter or modify the Bespoke Software or the program documentation in any way whatever nor permit the Bespoke Software to be combined with any other programs to form a combined work;
- (9) Neither perform nor cause, suffer nor permit to be performed any maintenance adjustments or repairs to the Equipment by persons other than the Supplier or the Supplier's authorised agents;
- (10) Ensure that only such software and operating supplies as supplied or approved in writing by the Supplier are used with the Equipment;
- (11) Make freely available to the Supplier all documentation, media and software necessary for the efficient maintenance of the Equipment;
- (12) Ensure that no additional attachments, features or devices are employed or used with the Equipment and that no movement, change or alteration is made to the Equipment without the Supplier's prior written consent in each case, which shall not be unreasonably withheld;
- (13) Where the Supplier's services comprise or include web-site hosting, email and secure commerce services, in relation to the laws of all and any jurisdictions wheresoever: i. Use the Customer's website and / or the Server for lawful purposes only and not make or allow others to make excessive or wasteful use of the server to the Supplier's detriment or that of the Supplier's other Customers; ii. Not knowingly or recklessly post link or transmit or allow others to post link or transmit any material that is or may be unlawful threatening abusive harmful malicious libellous defamatory obscene pornographic profane or otherwise objectionable or containing a virus or other hostile computer program; iii. Indemnify the Supplier against any claim brought against the Supplier by a third party resulting from the provision of such services by the Supplier to the Customer and the Customer's use of the Server and in respect of all liabilities whatsoever suffered and howsoever incurred by the Supplier in consequence of the Customer's non-observance of this Agreement; iv. Be solely responsible for obtaining any and all necessary intellectual property rights clearances consents and Agreements in respect of domain names, merchant and other web-based services to be provided by the Customer;
- (14) Use only original manufacturer or the Supplier recommended consumables in photocopiers, printers and fax machines. Any breach of this clause shall render any warranties as being void and in addition the Supplier reserves the right to levy an additional charge to remedy any defects arising from the use of non-compliant consumables;
- (15) Select the Equipment and ensure that it is suitable for the Customer's requirements in all respects;
- (16) Take proper care of the Equipment and ensure that it is used in accordance with the manufacturer's handbook, recommendations and instructions and not misused.
- (17) Provide upon request, but no more than once a month, an accurate meter reading from the Equipment (and each item of equipment if more than one item is subject to this Agreement). A meter reading shows the number of prints made since the last reading. The Supplier will issue either a monthly or quarterly statement showing the meter readings and, where applicable, the Contracted Volume (CV). Where the prints per quarter exceed any CV the excess prints will be invoiced at the agreed price. If the Customer fails to provide a meter reading the Supplier shall be entitled to invoice and be paid on the basis of its own reasonable estimate.
- (18) Where (a) the Customer leases Equipment from the Supplier (b) the Agreement provides that the Equipment shall at any time be maintained on the basis that the Customer pays an additional sum in respect of any parts supplied by the Supplier (c) the Supplier recommends that parts are fitted by way of repair, routine maintenance or the like (d) the Customer does not accept such recommendation and (e) consequently the value of the Equipment reduces compared to what its value would have been had the parts been fitted, then the Customer shall pay to the Supplier a sum equivalent to the shortfall in value of the Equipment as at the termination of the lease. In the event of any dispute regarding value the manufacturer of the Equipment shall be asked to provide an opinion.
- (19) The Customer shall comply with all statutory requirements related to the agreement and apply and pay for any such licences / way-leaves required by law.

### SCHEDULE B (PARTICULARS OF MAINTENANCE AND SUPPORT)

The Services shall be provided during the Standard Support Hours and shall comprise: -

- (1) Preventative and on-call remedial maintenance of the Equipment and/or the Bespoke Software and/or software supplied by the Supplier to include inspection and maintenance together with the carrying out of repairs by the Supplier or the Supplier's authorised agents at the Installation Address.
- (2) Help and support by telephone in respect of problems identified by the Customer where the Supplier deems this appropriate.
- (3) Remote diagnosis and, where possible, correction of faults using any software management software provided by the Supplier. Provided that where the Supplier intends to correct a Non-Critical Fault (as defined below) in (a) a forthcoming maintenance release in the case of Bespoke Software or (b) maintenance visit in the case of Equipment, then, for a reasonable period prior to the issue of such (a) maintenance release or (b) maintenance visit the Supplier shall be entitled to decline to provide assistance in respect of that Non-Critical Fault.
- Definitions: "Critical Fault": a fault, which substantially hinders or prevents the Customer from using a material part of the functionality of the (a) Bespoke Software or (b) Equipment. "Non-Critical Fault": any fault other than a Critical Fault.

### SCHEDULE C (PARTICULARS OF EXCLUDED MAINTENANCE AND SUPPORT)

- (1) The items of maintenance and support described in this Schedule do not fall within Services and are excluded from this Agreement.
- (2) To the extent that the Supplier does any work or supplies any service of the type described in this Schedule it shall make and the Customer shall pay an additional charge at reasonable commercial rates plus reasonable expenses. Such invoices shall be paid in full, without deduction or set off, on receipt (or within 7 days where such payment terms are provided for by the invoice).
- (3) Work done or services supplied at the Customer's request but which the Supplier finds are not necessary for the proper maintenance or support of the equipment.
- (4) Any maintenance, support work or service not expressly included in Schedule B;
- (5) Electrical work external to the Equipment;
- (6) Maintenance of attachments, machinery, devices or associated equipment (whether or not supplied by the Supplier) which do not form part of the Equipment;
- (7) Repair of damage arising from any cause (other than fair wear and tear) or the Customer's neglect or fault including without limitation: (i) Transportation or relocation of the Equipment not performed by the Supplier; (ii) Failure to or fluctuation of electrical power, air conditioning or humidity control or other environmental conditions or any defect or failure in relevant public telecommunications networks; (iii) Changes, alterations or additions not performed by the Supplier; (iv) Operator error or omission; (v) Other neglect or fault of the Customer or any third party; (vi) Act of God, fire, flood, war, act of violence, or any other similar occurrence; (vii) Failure of line wiring (where relevant and included with the Equipment) other than by reason of fair wear and tear;
- (8) Maintenance or support rendered significantly more difficult because of changes, alterations or additions made other than by the Supplier;
- (9) Attendance to faults caused by operating the Equipment outside design specifications or without any documentation or manuals supplied with the Equipment;
- (10) Cleaning, painting, refinishing or touching-up;
- (11) Specification changes, relocation of Equipment, addition/removal of accessories, attachments and other devices; including alterations to meet a change in the Customer's requirements or the standard requirements of any relevant public network operator or other relevant authority;
- (12) Reconditioning of the Equipment;
- (13) Repair of any malfunction due to radiation in the environment of the Equipment;
- (14) Diagnosis and/or rectification of problems not associated with the Equipment;
- (15) Diagnosis and/or rectification of problems arising from the environment in which the Equipment operates;
- (16) Refusal of, difficulty or inability to obtain access to the Equipment;
- (17) Maintenance or support services other than at the Installation Address (or such other location as the Supplier shall have approved in writing);
- (18) Moving or reinstallation of the Equipment;
- (19) Replacement or refurbishment of any external cabinetry including cassettes feed and exit trays etc;
- (20) Supply of necessary replacement parts and consumables.
- (21) In the case of toner (black and colours) inclusive maintenance and support Agreements, all and any toner used in excess of the manufacturer's stated yield (as detailed on the specification sheet/ price list). The Supplier reserves the right to make a charge for the excess toner used.
- For the avoidance of doubt nothing in this Agreement shall impose any obligation on the Supplier to provide software support or maintenance services in respect of any of the following:-
- (a) Defects or errors resulting from any modification of the Bespoke Software or Equipment made by any person other than the Supplier;
- (b) Incorrect use of the Bespoke Software or Equipment or operator error;
- (c) Any fault in any software or programs not supplied or approved by the Supplier and used in conjunction with the Bespoke Software or Equipment;
- (d) Defects or errors caused by the use of the Bespoke Software on or with equipment, software or programs not supplied by or approved in writing by the Supplier;
- (e) Any modification of the Bespoke Software if such modification would result in a departure from the Specification;
- (f) Loss or damage caused directly or indirectly by user or operator error or omission, neglect or willful default;
- (g) Training;
- (h) System analysis, programming, installation, or training on additional computer software;
- (i) Installation of any necessary changes to the any software caused by changes in Government legislation;
- (j) Data recovery, data file creation, data input, computer processing, etc;
- (k) Cost of the modern at the Customer's site and transmission charges for calls made to the Supplier;
- (l) Provision of upgrades or modifications to the Bespoke Software or any of the Customer's software systems where changes are made by the software authors;
- (m) Loss of data resulting from actions carried out by the Supplier during maintenance or support;
- (n) Any loss or damage caused by any factor outside the Supplier's control;
- (o) Supply of, damage to or recovery of any consumables, including, though not exclusively, tapes, paper, ribbons and floppy disks;
- (p) Supply and cost of necessary replacement parts (unless otherwise agreed in writing on the first page of this contract);
- (q) Defects or problems arising from software not written by the Supplier (eg Microsoft software) save that where a fix or patch is available to the Supplier from the software house free of charge the Supplier will supply such remedial software to the Buyer within a reasonable time free of any additional charge.
- (r) In the case of computer networks and telecons, any external, overhead or underground cabling. In addition any cabling (including extensions and alterations) not carried out by the Supplier.